No. [redacted] 205

JOHN T. FEY, Clerk

In the

United States Court of Appeals

For the Seventh Circuit

No. 11873

HELEN N. FLEMING, WILLIAM J. NEWMAN, JR., MARGARET N. WALSH, RICHARD P. NEWMAN, JOSEPHINE N. KRUG, ADELAIDE LOMACANO and WILLIAM McKAVIS, a minor, by HELEN N. FLEMING, his next friend,

Plaintiffs-Appellees,

vs.

LAKE DELTON DEVELOPMENT COMPANY, a Wisconsin Corporation, RALPH M. HINES, JAMES B. HILL, SR., HILMER C. AMUNDSON and HENRY C. TITUS,

Defendants-Appellees,

and

JAMES B. HILL, JR., MILLIE M. RISLEY, FRANCES HINES and A. B. BATTY,

Impleaded Defendants-Appellees,

On Appeal of E. R. BORGMEIER,

Respondent-Appellant.

On Appeal from order entered November 27, 1956, in the District Court for the Western District of Wisconsin.

Honorable Patrick T. Stone, District Judge.

BRIEF AND APPENDIX FOR APPELLANT

E. R. BORGMEIER,
Attorney for Appellant.

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 11873

HELEN N. FLEMING, WILLIAM J. NEWMAN, JR.; MARGARET N. WALSH, RICHARD P. NEWMAN, JOSEPHINE N. KRUG, ADELAIDE LOIACANO, and WILLIAM McKAVIS, a minor, by HELEN N. FLEMING, his next friend, Plaintiffs-Appellees, vs. LAKE DELTON DEVELOPMENT COMPANY, a Wisconsin Corporation, RALPH M. HINES, JAMES H. HILL, SR., HILMER C. AMUNDSON and HENRY C. TITUS, Defendants-Appellees, and JAMES H. HILL, JR., MILLIE M. RISLEY, FRANCES HINES and A. B. BATTY, Impleaded Defendants-Appellees. On Appeal of E. R. BORGMEIER, Respondent-Appellant.	On Appeal from order entered November 17, 1955, in the District Court for the Western District of Wisconsin. Honorable Patrick T. Stone, District Judge.

BRIEF FOR THE APPELLANT.

STATEMENT OF FACTS.

The facts herein are the same facts presented for consideration in the mandamus and prohibition proceeding filed in this Court, Case No. 11675, entitled "*E. R. Borgmeier, Petitioner,* v. *Honorable Patrick T. Stone,* as Judge of the United States District Court for the Western District of Wisconsin, Respondent", in which proceeding this Court rendered its opinion on May 11, 1956.

On May 21, 1953, respondent as attorney filed the complaint in the court below, on behalf of the heirs of William J. Newman, Sr., of Chicago, Illinois, who died June 2, 1943, to establish a constructive trust in lands, personal property and business enterprises located in Sauk County, Wisconsin, conveyed by William J. Newman and Margaret Y. Newman, his wife, as well as by other nominees of said W. J. Newman, to the Lake Delton Development Company (then known as Lake Delton Hotel Company). These conveyances were made on or about August 1, 1936, in accordance with an order entered in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding then pending therein under Section 74 of the Bankruptcy Act, entitled "In the Matter of William J. Newman, Debtor", Case No. 58282. After the entry of the order directing these conveyances, the reorganization proceeding was converted into a straight bankruptcy.

The lands conveyed at that time (exclusive of the personal property and the many and varied business enterprises, and exclusive of the lands and other assets previously conveyed to the nominees) comprised approximately 2300 acres in the Dells area of Wisconsin, and included the lake known as Lake Delton, and were appraised at the close of the calendar year 1936 at the sum of $764,171.00, as is disclosed by the audit of McMurray Smith & Company for the years 1934-1936, withdrawn in accordance with Judge Stone's order of September 21, 1955 (App. 8-9-10). Since that time considerable expansion, improvement and development has been had, and the properties and businesses so conveyed have been enhanced greatly, and undoubtedly doubled, in value.

The plaintiffs agreed to pay the appellant as compensation for her services in connection with said suit

one-half of any recovery had by way of suit, settlement or otherwise, which is the basis of her attorney's charging lien.

The defendants include Mr. Newman's Wisconsin representatives and confidential employees, including the Lake Delton Development Company, his solely-owned corporation; Ralph M. Hines, his Wisconsin manager and president of the Lake Delton Development Company; James H. Hill, Sr., James H. Hill, Jr., and Erma C. Miller, practicing law at Baraboo, Wisconsin, as Hill, Miller & Hill, his Wisconsin attorneys; Hilmer C. Amundson, his Wisconsin engineer; Henry C. Titus, his bookkeeper until 1936; and others. All of the above named defendants, with the exception of Henry C. Titus, remained in such capacity with Mr. Newman until his death, in 1943. All of the defendants in said cause were represented by Arthur Wickham and Erma C. Miller as their attorneys.

The plaintiffs and their spouses included among their number three attorneys, two of whom, Geoffrey Fleming and Edwin Walsh, are actively practicing law at Chicago, Illinois. Said Geoffrey Fleming, the husband of plaintiff Helen N. Fleming, represented Mr. Newman as his attorney in the reorganization and bankruptcy proceedings at Chicago, Illinois, above referred to, and subsequent to respondent-appellant's withdrawal as plaintiffs' attorney, acted as one of the attorneys for plaintiffs.

During the time that respondent-appellant represented plaintiffs as their attorney, she was compelled to devote her entire time and attention to said suit. As a necessary part of such legal services, she removed her domicile to Sauk County, Wisconsin, during the summer of 1953, where among other duties she made complete examinations and duplications of the books and records at the Re-

corder's office of Sauk County, Wisconsin, from 1926 to date. She was likewise compelled to attend numerous pre-trial examinations of the defendants at Madison and Baraboo, Wisconsin, during the winter of 1953-1954. Thereafter by order duly entered by Judge Stone, the defendants deposited with the Clerk of the District Court at Madison ten (10) transfer cases of documents from the offices of the Lake Delton Development companies, and from the law offices of Hill, Miller & Hill, and from the offices of his engineer. There were more than 50,000 of such documents, covering the years 1926-1943, and respondent was obliged to remove her residence and office to Madison, Wisconsin, in order to examine these documents. She examined each of them, and caused them to be numbered for identification, and photostated in excess of 10,000, to be used as evidence in the case. These documents were the basis of her attorney's retaining lien, which was not adjudicated by Judge Stone at any time, but which was called to his attention in affiant's Special and Limited Appearances filed in the trial court on January 3, 1955 (App. 5; 7) and by copies of the itemized account supporting such retaining lien attached to said Special and Limited Appearances (App. 6; 7). The examination, photostating and asembling of these documents required three months of round-the-clock work, and she was also required to employ help in order to accomplish so much in so short a time.

On September 18, 1954, with the approval of Judge Stone by Order entered that day (App. 4) the appearance of Frank M. Coyne was filed in said proceedings as substituted counsel for Clifford G. Mathys as attorney for plaintiffs.

On October 21, 1954, respondent served her notice of motion and written motion on all necessary persons to

withdraw as attorney for plaintiffs, including the plaintiffs and Frank M. Coyne, as attorney for plaintiffs, and the attorneys for defendants (App. 4). The court originally set said motion for hearing on November 4, 1954 (of which date the plaintiffs were notified by respondent—(App. 4), but was thereafter changed to November 3, 1954, without the knowledge of respondent. At the hearing held on respondent's motion (with other motions) on November 3, 1954, the court entered an order permitting respondent to withdraw her appearance as attorney for plaintiffs.

Notice of the entry of said order was forwarded to plaintiffs by respondent on November 9, 1954 (App. 5). Thereafter, on November 22, 1954, respondent filed her withdrawal of appearance as attorney for plaintiffs in accordance with said order entered by Judge Stone on November 10, 1954 (App. 5). The filing of such withdrawal, pursuant to court order, terminated the jurisdiction of the District Court over respondent-appellant, and no jurisdiction was ever thereafter acquired over her by said Court.

On December 7, 1954, Judge Stone entered an ex parte order to show cause against respondent on petition of Geoffrey Fleming, why she should not be compelled to deliver up to plaintiffs or their agents all documents in her possession. Such rule to show cause was never served on her, but she did file her Special and Limited Appearance thereto solely to contest the jurisdiction of the Court (App. 5), and to apprize the court of her attorney's retaining lien in the sum of $10,004.96 (App. 5, 6). Thereafter, on January 25, 1955, Judge Stone entered an ex parte order vacating that portion of his order of November 10, 1954, permitting respondent to withdraw her appearance, and reinstating her as attorney for plaintiffs

and compelling her to present herself to the Court for such further order as is necessary on February 14, 1955 (App. 6); to which order of January 25, 1955 (January 26, 1955) respondent again filed her Special and Limited Appearance seeking solely to contest the jurisdiction of the trial court over her (App. 7); and subsequent to which date Judge Stone entered his order of Februar 15, 1955 (App. 7) reinstating her as attorney for plaintiffs and directing her to deposit with the Clerk of the Court all documents in her possession.

Thereafter respondent filed her Notice of Appeal to this court from the order entered by Judge Stone on February 15, 1955 (Notice of Appeal, (App. 7); and also filed her appeal bond, Designation of Contents, Statement of Points, and Statement in Accordance with Rule 10 (b); all of which are included in the record on appeal herein.

On March 25, 1955, Judge Stone, on the Court's own motion, entered an ex parte order vacating the order from which respondent had appealed, and reinstated his order of November 3, 1954, permitting respondent to withdraw as plaintiff's attorney.

Immediately subsequent to the entry of the order of February 15, 1955, from which respondent prayed an appeal, but prior to the filing of her said Notice of Appeal, respondent forwarded to plaintiffs on February 21, 1955, her bill for legal services rendered in connection with said *Lake Delton* case, showing 3800 hours of legal services rendered at $25.00 per hour, or a total of $95,000.00 (which said bill, with affidavit of mailing, was filed in the trial court on December 21, 1955 (App. 19) for inclusion in the record on appeal herein; that she did also, on February 25, 1955, forward to all of the defendants by

registered mail, return receipt requested, her Notice of Attorney's Lien for services rendered and balance of costs advanced in connection with the *Lake Delton* case, which Notice of Attorney's Lien was filed by her in the trial court on December 13, 1955 (App. 18) to be included in the record on this appeal; that such lien was served upon defendants pursuant to and in accordance with the provisions of Section 256.36 of the Laws of the State of Wisconsin with reference to attorney's lien.

Said cause of *Fleming* v. *Lake Delton Development Co.* was called for trial before Judge Stone on September 20, 1955, and on the day following, was settled between the parties, at which time they entered into a settlement agreement and stipulation dated September 21, 1955, which was approved by Judge Stone (App. 8-9-10), that such stipulation provided that defendants would pay plaintiffs in full of all liability the sum of $32,500.00, in installments of $10,000.00 within 30 days, another $10,000.00 within 60 days, and the balance of $12,500.00 within one year from date of such settlement, all such payments to be deposited with the Clerk of the District Court, and that notice of such settlement be given respondent by James H. Hill, Jr., one of the defendants, "so that the said Miss Borgmeier may take such steps as she may desire to enforce any lien which she may claim or assert herein"; that Mr. Hill duly gave such notice to respondent.

The first payment of $10,000.00 was deposited by the defendants with the Clerk of the Court on October 11, 1955; and the second deposit of $10,000.00 was made November 8, 1955 (App. 12-13).

On November 9, 1955, an ex parte order was entered by Judge Stone, on motion of Frank M. Coyne with supporting affidavit of Geoffrey Fleming, acknowledged at

Chicago, Illinois, on November 8, 1955, directing respondent to appear before the court on November 17, 1955, "and show cause, if any, why the alleged attorney's lien purported to have been filed in the above captioned matter should not be adjudicated or other wise disposed of and upon adjudication of said alleged lien rights, monies now on deposit pursuant to settlement agreement dated September 21, 1955, should not be paid to the plaintiffs"; and that "a copy of this order together with the Petition of Geoffrey Fleming be served upon said Eleanore Borgmeier, Esq., by registered United States Mail with return receipt, said registered mail notice to be sent from the office of the Clerk of the United States District Court * * * said registered mail service to be made on said Eleanore Borgmeier at least ninety-six (96) hours prior to the aforementioned return date. (App. 10, 11).

Such notice was accordingly mailed by the Clerk of the United States District Court, but was not received by Appellant, as is affirmatively shown by the undelivered, unclaimed and unopened envelope so mailed by the Clerk of the Court, and which was returned to him by the United States postal authorities on November 22, 1955.

On November 17, 1955, (on the return of said rule to show cause entered against respondent on November 9, 1955), Judge Stone entered an order determining that "due and sufficient service of said Order to Show Cause upon Eleanor Borgmeier, Esquire, has been effected and that there has been no appearance by her nor by anyone on her behalf and that the Court has jurisdiction to pass upon the aforementioned Order to Show Cause and application for distribution of funds by the plaintiffs," and ordering "that the present sum of $20,000 now on deposit with Edgar Alstad, Clerk of the above captioned District Court, pursuant to settlement agreement of September

21, 1955, be hereby released to the plaintiffs through their attorneys free from any lien of Attorney Eleanore Borgmeier, Esquire." (App. 13-14).

The first knowledge respondent had of the entry of the orders of November 9th and November 17th was on November 20, 1955, when she received by ordinary mail from Frank M. Coyne a copy of the order entered November 17, 1955.

On December 13, 1955, respondent filed her Notice of Appeal to this Court from said order of November 17, 1955, (App. 16) together with her appeal bond (App. 20); and thereafter duly filed her Designation of Contents (App. 22), her Statement of Points on Appeal (App. 20), and Statement in Accordance with Rule 10 (b) (App. 20). She likewise filed a motion (without submitting herself to the jurisdiction of the trial court), to include the original transcripts of proceedings (App. 20).

Thereafter, on motion and affidavits of Frank M. Coyne, Judge Stone did enter orders against respondent on January 2, 1956 (App. 20), and on January 18, 1956, (App. 21), both of which orders were directed to be expunged by the mandate, issued by this court in Case No. 11675, above referred to, being the mandamus proceeding necessarily filed by this affiant to bring this appeal before this court; that by virtue of the mandate of this court so entered, the contents of said orders have become moot upon this appeal.

The record on appeal was filed herein on September 26, 1956, after order of this court entered herein.

SUMMARY OF ARGUMENT.

The trial court ceased to have jurisdiction over appellant on November 19, 1954, at the time she filed her withdrawal of appearance as attorney for plaintiffs, after leave of court first had and obtained. The trial court never re-acquired jurisdiction over her. The trial court was therefore without authority to enter against her its order of November 17, 1954, herein appealed from.

CONTESTED ISSUE.

Did the trial court have jurisdiction over appellant on November 17, 1955, at the time it entered the order appealed from?

PROPOSITIONS OF LAW RELIED ON.

Jurisdiction over the person can only be acquired in one of two ways:

a) By voluntary appearance by defendant (respondent); or

b) Service of process upon him, according to statute.

Robertson v. *Railroad Labor Board*, 268 U.S. 619; 45 S. Ct. 621; 69 L. Ed. 1119.

In the absence of voluntary appearance, service of process must ordinarily be made according to Rule 4 of the Rules of Civil Procedure, except in cases where service must be made in accordance with a special statute. The enforcement of liens or release thereof is controlled by Chapter 28, Section 1655, Lien Enforcement.

Chapter 28, Rule 4, Rules of Civil Procedure.
Chapter 28, Section 1655, Lien Enforcement.
O'Brien v. *Richtarsic*, D.C.N.Y. 1941, 2 F. R. D. 42.

ARGUMENT.

The trial court had no jurisdiction over appellant at the time the order of November 17, 1955, was entered against her.

The principle of law is well established that a court can only acquire jurisdiction over a defendant in one of two ways (*Robertson* v. *Railroad Labor Board*, 1925, 268 U. S. 619, 45 S. Ct. 621, 69 L. Ed. 1119):

a) By voluntary appearance of the defendant; or

b) By service of process on defendant in accordance with statute.

In the absence of voluntary appearance, the statutory method of service must be complied with. The usual method of service is provided by Rule 4 of the Rules of Civil Procedure and such service over appellant was never attempted. A special statute, (Chapter 28, Section 1655) governs the release of liens, but the service of process provided for therein was never attempted. The order of November 9, 1955, attempting to secure jurisdiction over appellant, provided that service be had upon her by registered mail at least 96 hours prior to November 19, 1955 (App. 10, 11). Such service was likewise never had upon her (App. 15). In fact, no service was ever had upon her. In order to obtain jurisdiction over a party who does not appear voluntarily, service must be had in conformity with statute, or in the absence of statute, in conformity with court order. (*O'Brien* v. *Richtarsic*, D.C.N.Y. 1941, 2 Fed. R. Dec. 42). Unless service is acquired in this fashion, the court does not have jurisdiction over the person.

After appellant had withdrawn her appearance on November 19, 1954, she at no time voluntarily submitted to the jurisdiction of the trial court. Neither was any process of any kind served upon her up to and including November 17, 1955. The service directed by the order of November 9, 1955, was never effected. The trial court therefore had no jurisdiction over her on November 17, 1955, and the Court was without authority to enter its order releasing her attorney's lien from the moneys on deposit with the Clerk of the Court.

That, therefore, the order entered November 17, 1955, should be vacated and set aside and held for naught.

Respectfully submitted,

E. R. BORGMEIER,
Attorney pro se.

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APPENDIX.

STATEMENT PURSUANT TO RULE 16-B.

Complaint was filed May 21, 1953, by appellant as plaintiffs' attorney to establish constructive trust. On September 18, 1954, an order was entered by Judge Stone approving substitution of attorney Frank M. Coyne as resident attorney for plaintiffs in place of Clifford G. Mathys. Notice of motion to withdraw as attorney for plaintiffs was filed by appellant on October 21, 1955, showing notice served on plaintiffs and Frank M. Coyne. On November 10, 1954, Judge Stone entered his order (oral directions on November 3, 1954) permitting appellant to withdraw as plaintiffs' attorney. Notice of said order was given to plaintiffs by appellant. On November 22, 1954, appellant filed her withdrawal of appearance as attorney for plaintiffs.

On December 7, 1954, Judge Stone entered ex parte order against appellant to show cause on January 4, 1955, why she should not return to plaintiffs or their agents all documents in their possession, to which order appellant filed her Special and Limited Appearance on January 3, 1955.

On January 25, 1955, Judge Stone entered ex parte order against appellant to show cause on February 14, 1955, why she should not be reinstated as attorney for plaintiffs, to which order appellant filed her Special and Limited Appearance on February 14, 1955.

On February 15, 1955, Judge Stone entered order vacating withdrawal order of November 10, 1954, and reinstated appellant as plaintiffs' attorney, from which order appellant filed her notice of appeal on February 28, 1955, and thereafter filed her Designation of Contents and Statement

in Accordance with Rule 10 (b), and Statement of Points on Appeal.

On March 25, 1955, Judge Stone entered order vacating the order of February 15, 1955, and reinstating order of November 10, 1954, permitting appellant to withdraw as plaintiffs' attorney.

Case came on for trial on September 20, 1955, and was settled by agreement of the parties on September 21, 1955, as per stipulation filed and approved by Judge Stone on September 21, 1955, providing for payment of $10,000.00 in 30 days, $10,000.00 in 60 days, and $12,500.00 in one year. $10,000.00 was deposited with the Clerk on October 11, 1955, and $10,000.00 was deposited on November 8, 1955.

On November 9, 1955, Judge Stone entered ex parte order against appellant to show cause on November 17, 1955, why her attorney's lien on moneys on deposit should not be released, and provided that notice of entry of said order be given to appellant by Clerk of Court by registered mail, with return receipt, service thereof to be made on appellant at least 96 hours prior to return date. Such notice was never delivered to appellant.

On November 17, 1955, Judge Stone entered order finding that due and sufficient service of said order to show cause has been effected, and no appearance has been had by her or for her, and that the present deposit of $20,000.00 be released to plaintiffs free from any lien of appellant.

On November 22, 1955, there was returned to the Clerk of the District Court at Madison, by the postal authorities at Lemont, Illinois the undelivered, unclaimed and unopened registered letter forwarded by the Clerk on November 9, 1955.

On December 13, 1955, appellant filed her Notice of Appeal from the order of November 17, 1955, together

with attorney's lien served by her upon defendants on February 25, 1955, as per Wisconsin statute, together with appeal bond.

On December 21, 1955, appellant filed her Designation of Contents, Statement of Points on Appeal, Statement in accordance with Rule 10 (b); and copy of bill for legal services forwarded to plaintiffs on February 21, 1955, with affidavits of mailing.

1-7 Complaint in Equity, filed May 21, 1953, by E. R. Borgmeier, as attorney for plaintiffs, stating that on or about to-wit, April 10, 1936, the Lake Delton Hotel Company (now known as Lake Delton Development Company) a Wisconsin corporation, by an order of the District Court of the United States for the Northern District of Illinois, Eastern Division, became the nominal purchaser of all of the right, title, interest and equity of William J. Newman, Sr., in and to all real estate owned by him in Sauk County, Wisconsin, and more particularly located in Sections 9, 10, 15, 16, 17, 20 21, 22, 28 and 29, Township 13 North, Range 6, East of the Third Principal Meridian, and in the Village of Delton, all in Sauk County, Wisconsin; that the title to said real estate was taken in the name of Lake Delton Hotel Co.; that all of the purchase price therefor was advanced by said William J. Newman, Sr., of Cook County, Illinois, by virtue of which he became entitled to a resulting trust in and to the whole of said real estate, and became entitled to the whole of said real estate, in fee simple, together with all of the rentals, avails and proceeds thereof; that said title so acquired by Lake Delton Hotel Company became and was held in trust for said William J. Newman, Sr., and his heirs, in fee simple; that by virtue of the death of said William J. Newman, Sr., on June 2, 1943, and the subsequent deaths of certain of his heirs, the interest of William J. New-

man, Sr., in said real estate is now vested in the plaintiffs; that the court should find that all conveyances made by said Lake Delton Hotel Company and/or Lake Delton Development Company, or Ralph M. Hines, James H. Hill, Sr., Hilmer C. Amundson, Henry C. Titus, or any other officers, directors or nominees of said corporation, were made by them with full knowledge of the interest therein of said William J. Newman, Sr., and should be held null and void, and removed as clouds upon the title of plaintiffs; and that an accounting should be had between the plaintiffs and the parties defendant; and that plaintiffs should have such other relief as equity requires.

8 Withdrawal of Clifford G. Mathys as resident counsel for plaintiffs; appearance of Frank M. Coyne as resident counsel for plaintiffs; approval of withdrawal and substitution by Judge Stone on September 18, 1954.

9-11 Notice to attorneys for defendants, to Frank M. Coyne and to plaintiffs by E. R. Borgmeier of her motion to withdraw as attorney for plaintiffs, with attached motion dated October 21, 1954, and affidavit of mailing showing mailing on October 21, 1954.

12-14 Order entered by Judge Stone on November 10, 1954, showing hearing on above motion on November 3, 1954, "the plaintiffs appearing by their attorney, Frank M. Coyne and providing inter alia:

13 "Paragraph 4. That the motion of E. R. Borgmeier to withdraw as the attorney for the plaintiffs, it appearing that the plaintiffs have had reasonable notice of the desire of said E. R. Borgmeier to withdraw, and the Court so finds, be and same is hereby granted."

15-16 Notice to plaintiff by E. R. Borgmeier of hearing on above withdrawal motion set for November 4,

1954. Affidavit of mailing to plaintiffs on November 1, 1954. Filed November 22, 1954.

17-18 Notice to plaintiffs by E. R. Borgmeier of entry of order on November 3, 1954, granting inter alia leave to withdraw as attorney for plaintiffs. Affidavit of mailing to plaintiffs on November 9, 1954. Filed November 22, 1954.

19 Withdrawal by E. R. Borgmeier as attorney for plaintiffs, dated November 9, 1956. Filed November 22, 1954.

20 Order of Judge Stone dated December 7, 1954 (filed January 3, 1955) directing E. R. Borgmeier, original attorney for plaintiffs, to appear before the Court in person on January 4, 1955, and show cause why an order should not be entered directing her to turn over all books, records, documents, pleadings, exhibits, etc., now or ever in her possession to Frank M. Coyne, Geoffrey Fleming, or Helen Fleming, or any of the other plaintiffs as the Court shall direct; copy of said order to be served on respondent not less than 48 hours prior to return date.

21-23 Motion of Frank M. Coyne, attorney for plaintiffs, with supporting affidavit of Geoffrey Fleming, seeking entry of above order.

23 (Reverse side). Return of above writ unexecuted by U. S. Marshal at Chicago, Illinois, dated January 4, 1955.

24-28 Special and Limited Appearance of E. R. Borgmeier and supporting affidavit to order entered December 7, 1954, solely to contest jurisdiction of court over resondent. Sets forth her attorney's retaining lien on documents in her possession for costs advanced for plaintiffs in the sum of $10,004.96 (exclusive of attor-

neys' lien for services in connection with case of Fleming *vs.* Lake Delton Dev. Co.)

29 Affidavit of mailing showing mailing of Special and Limited Appearance and supporting documents on December 31, 1954.

30-34 Itemized statement (attached to Special and Limited Appearance) of costs advanced and obligations incurred on behalf of plaintiffs, dated November 10, 1954, showing balance due $10,004.96.

35 Notice of motion by Frank M. Coyne to E. R. Borgmeier dated January 22, 1955, for presentation on January 25, 1955. Filed January 25, 1955.

36 Motion of Frank M. Coyne, dated January 22, 1955, asking court "to vacate that portion of its order of November 3, 1954, which granted motion of E. R. Borgmeier to withdraw as attorney for plaintiffs, and to enter order reinstating her as counsel for plaintiffs, and compelling her to present herself to the court for such further order as is proper and necessary in the further prosecution of this action".

37-38 Order entered by Judge Stone on January 26, 1955, showing hearing on January 25, 1955, and providing inter alia:

38 "(1) That plaintiffs' motion to vacate that portion of the order dated November 3, 1954 granting the motion of E. R. Borgmeier to withdraw as attorney for the plaintiffs and to reinstate her as counsel for said parties and compelling her to present herself to the Court for such further order as is proper and necessary, be and the same is hereby continued until February 14, 1955 at 10:00 A.M., and that such motion come on for hearing at that time before this Court in his courtroom in the City of Madison, Wisconsin, and that said E. R. Borgmeier is hereby directed to be personally present in said

courtroom at that time.

39-45 Special and Limited Appearance of E. R. Borgmeier and supporting affidavit to order entered January 26, 1955, solely to contest jurisdiction of court over respondent. Sets forth her retaining lien on documents in her possession for costs advanced for plaintiffs in sum of $10,004.96 (exclusive of attorneys' lien for services in connection with case of Fleming *vs.* Lake Delton Dev. Co.)

46 Affidavit of mailing showing mailing of Special and Limited Appearance and supporting documents on February 10, 1955.

47-51 Itemized statement (attached to Special and Limited Appearance) of costs advanced and obligations incurred on behalf of plaintiffs, dated November 10, 1954, showing balance due $10,004.96.

52-53 Order entered by Judge Stone on February 15, 1955, showing hearing on February 14, 1955, and providing inter alia:

53 (4) That the order of this court heretofore entered discharging said E. R. Borgmeier as attorney for the plaintiffs be and the same is hereby vacated and set aside; that said E. R. Borgmeier again appear herein as attorneys for the plaintiffs; and that she within ten days from the date of this order deposit with the clerk of this court each and all of the papers which have come into her possession as such attorney for the plaintiffs.

54 Notice of Appeal dated February 25, 1955, by E. R. Borgmeier from order of Judge Stone entered February 15, 1955. Filed February 28, 1955.

55-56 Designation of Contents of Record on appeal of E. R. Borgmeier from order entered by Judge Stone on February 15, 1955.

57 Affidavit of Mailing showing mailing of Designation of Contents of Record on Appeal, together with

Statement in Accordance with Rule 10(b) of the United States Court of Appeals, on March 18, 1955.

58-63 Statement in accordance with Rule 10(b) of the United States Court of Appeals filed by E. R. Borgmeier in connection with appeal from order entered by Judge Stone on February 15, 1955. Filed March 21, 1955.

64-65 Statement of Points on Appeal filed in connection with appeal from order entered by Judge Stone on February 15, 1955. Filed March 21, 1955.

66 Affidavit of Mailing showing mailing of Statement of Points on Appeal, on March 18, 1955.

67-69 Order entered on March 25, 1955, by Judge Stone on court's own motion, directing that paragraph (4) of the order of February 15, 1955, entered by this Court be vacated and set aside; and that Paragraph (4) of the Order entered herein on November 19, 1954, granting leave to E. R. Borgmeier to withdraw as attorney for plaintiffs, be and the same is hereby reinstated, and is now in full force and effect.

70-72 Stipulation entered into in open court on September 21, 1955, by and between the plaintiffs in person and by their counsel, Frank M. Coyne and Geoffrey Fleming and by defendants in person and by their counsel, Mr. Arthur Wickham, James H. Hill, Sr., James H. Hill, Jr., Harold Langer, and Robert Kasiska; with order approving same (caption omitted):

STIPULATION

It is stipulated and agreed that, upon the representations by plaintiffs that all of the parties plaintiff are adults and that payment can properly be made to them without any order or further order of any court having jurisdiction of minors, the defendants agree to pay in to the Clerk

of the United States District Court for the Western District of Wisconsin, for the use and benefit of the plaintiffs, and as a full, final and complete discharge of any and all claims and liabilities, either due or in expectancy, of the plaintiffs or any of them against the defendants or any of them, or against any parties defendant against whom service of process has been attempted or who appear anywhere in the pleadings or the files in this proceeding as defendants, their heirs and assigns, the sum of $32,500.00 in manner and form as follows: $10,000.00 within thirty days of this date; $10,000.00 within sixty days of this date; and $12,500.00 within one year of this date.

It is further stipulated and agreed that this action will only be dismissed upon the full payment of said sum of $32,500.00; that in the event of a default on the part of the defendants, any sums so paid in under this stipulation shall be defaulted to the plaintiffs, and this case shall then proceed as if this stipulation had not been entered into, the testimony presently taken herein to be used and considered upon any such hearing of this cause.

It is further stipulated and agreed that, upon producing satisfactory evidence to the court the final payment of $12,500.00 under this stipulation, the defendant may, without other or further notice, procure an order dismissing this action with prejudice and on the merits, each party to pay their own costs, plaintiff to pay the balance of the Clerk's fees, if any.

It is further stipulated and agreed that James H. Hill, Jr., shall without further delay give written notice by registered mail to Eleanor Borgmeier, Esq., at her last-known place of address, of the proceedings herein as above set forth, so that the said Miss Borgmeier may take such step as she may desire to enforce any lien which she may claim or assert herein.

The foregoing Stipulation is approved.

Permission is hereby granted to the defendants to withdraw 1934 to 1936 Audit of McMurray Smith & Company upon their agreement to return it into court at any time requested.

September 21, 1955.

/s/ Patrick T. Stone
United States District Judge

73-78 Affidavit of James H. Hill, Jr., acknowledged September 23, 1955, showing service of notice on E. R. Borgmeier of above stipulation and order, together with supporting documents, including registry receipt dated September 24, 1955, signed by E. R. Borgmeier; carbon copy of letter from James H. Hill, Jr., to E. R. Borgmeier; notice to E. R. Borgmeier from James H. Hill, Jr., dated September 21, 1955.

79-80 Order entered by Judge Stone on November 9, 1955. (Caption omitted.)

ORDER

Upon reading and filing of annexed petition of Geoffrey Fleming; and on motion of Frank M. Coyne, one of the attorneys for the plaintiffs,

It Is Hereby Ordered that Attorney Eleanore Borgmeier, Esq., original attorney for the plaintiffs in the above entitled matter appear before this court at 9:00 o'clock in the forenoon on the 17th day of November, 1955, in the Court rooms in the Federal Building, Madison, Wisconsin, and then and there show cause, if any, why the alleged attorney's lien purported to have been filed in the above captioned matter should not be adjudicated or otherwise disposed of and upon adjudication of said alleged lien rights, monies now on deposit pursuant to settlement agreement dated September 21, 1955, should not be paid to the plaintiffs.

It Is Further Ordered that a copy of this Order to-

gether with the Petition of Geoffrey Fleming be served upon said Eleanore Borgmeier, Esq., by registered United States mail with return receipt, said registered mail notice to be sent from the office of the Clerk of the United States District Court of the Western District of Wisconsin to said Eleanore Borgmeier at her last known address as on file with this Court to-wit; 500 Illiñois Street, Lemont, Illinois, said registered mail service to be made on said Eleanore Borgmeier at least ninety-six (96) hours prior to the aforementioned return date.

Dated this 9th day of November, 1955.

/s/ Patrick T. Stone
Judge

81-83 Petition of Geoffrey Fleming, acknowledged November 8, 1955, reciting that he is one of the attorneys for and duly authorized agent of the plaintiff and has knowledge of the fact; that prior to the filing of the complaint the plaintiffs entered into an oral agreement with said Eleanor Borgmeier to prosecute their claim for an agreed fee of 50% of any amount recovered by suit or settlement, and in the event no recovery of money damages was had, there would be no charge by her for said services; that there was no agreement by plaintiffs to pay any expenses whatsoever, except those court costs incidental to the prosecution of said suit; that on or about November 3, 1954, without cause, said Eleanor Borgmeier withdrew as attorney of record for plaintiffs; and that she thereafter refused to prosecute said claim and wilfully withheld all books and records of plaintiffs which came into her possession while acting as their attorney; that after she had withdrawn as such attorney plaintiffs necessarily employed Frank Coyne and petitioner to prosecute said action, and they in so doing atempted to cause the reinstatement of said Eleanor Borgmeier by

order of which, but she refused to re-enter the case and register service of orders upon her to do so, or to deliver up documents in her possession, and thereafter plaintiffs expended large sums of money duplicating whatever investigations had been made by said Eleanor Borgmeier; that petition is informed that subsequent thereto said Eleanor Borgmeier filed an alleged attorney's lien with the defendants that no such alleged lien was ever filed upon any of the plaintiffs, Attorney Frank Coyne or petitioner, nor was any ever filed in this court; that the above cause was settled for the sum of $22,500 to be paid in installments, and defendants, for their own benefit and protection, requested the right to deposit all installments with the Court for distribution; that such was permitted by order dated September 21, 1955, in open court, and that Eleanor Borgmeier was advised personally and in writing of such order and deposit, and was notified to assert any claim she alleged to have against such proceeds, all of which appears of record; that Eleanor Borgmeier has served no lien to this day on petitioner or plaintiffs nor has she filed any claim with said Court; that on September 21, 1955, the first payment of $10,000.00 with the Clerk of this court for distribution among plaintiffs, subject to the disposition of the foregoing attorney's lien of said Eleanor Borgmeier.

Wherefore petitioner prays that an order be entered requiring said Eleanor Borgmeier to answer this petition, and that her rights, if any, under said attorney's lien and contract of employment be adjudicated by this Honorable Court at an early date.

84 Ledger sheet showing deposits with Clerk of Court.

1953 May 21	Received check dated 5/21/53, remitted by Helen Newman Fleming	$200.00

1955 Oct. 11	Received from Lake Delton Co., pursuant to court order Sept. 21, 1955	$10,000.00
1955 Nov. 8	Received from Lake Delton Co. pursuant to court order Sept. 21, 1955	$10,000.00

85-89 Garnishee summons and garnishee complaint served on Clerk of District Court on November 15, 1955 by Sheriff of Dane County, Wisconsin, in case entitled "Virginia K. Newman *v.* William J. Newman, Defendant; Lake Delton Development Company, a Wisconsin corporation, and Edgar M. Alstad, Clerk of Federal District Court, Madison, Wisconsin, Garnishee Defendants; issued by Circuit Court of Dane County, Wisconsin, John J. Walsh, plaintiff's attorney; filed November 17, 1955.

90 Affidavit of Mailing by Edgar M. Alstad, Clerk of the United States District Court, acknowledged November 9, 1955 (with receipt No. 4136, Madison November 9, 1955), showing mailing by registered mail of copy of order to show cause entered by Judge Stone on November 9, 1955, addressed to Mrs. Eleanor Borgmeier, attorney at law, 500 Illinois Street, Lemont, Illinois.

ORDER

91-92 Order entered by Judge Stone on November 17, 1955, caption omitted.

The order to show cause against Attorney Eleanor Borgmeier, Esquire, seeking adjudication or disposition of the alleged lien on proceeds in the above matter, dated November 9, 1955, coming on for hearing at 9:00 in the forenoon on the 17th day of November, 1955, in the Federal Court rooms in Madison, the Honorable Patrick T. Stone, District Judge, presiding, and appearances being as follows:

Frank M. Coyne and Geoffrey Fleming on behalf of the plaintiffs, James Hill, Jr. on behalf of defendant, Lake Delton Development Company, Attorney John Walsh appearing on behalf of Virginia Newman, former wife of William Newman, Jr., pursuant to a garnishment served upon the defendant, Lake Delton Development Company and Edgar Alstad, Clerk of the United States District Court, in an action entitled Virginia Newman vs. William Newman, Jr., presently pending in the Circuit Court of Dane County, and there being no further appearances,

It Is Hereby Ordered that due and sufficient service of said Order to Show Cause upon Eleanore Borgmeier, Esquire, has been effected and that there has been no appearance by her nor by anyone on her behalf and that the Court has jurisdiction to pass upon the aforementioned Order to Show Cause and application for distribution of funds by the plaintiffs; and

It Is Further Ordered that the present sum of $20,000 now on deposit with Edgar Alstad, Clerk of the above captioned United States District Court, pursuant to settlement agreement of September 21, 1955, be hereby released to the plaintiffs through their attorneys free from any lien of Attorney Eleanore Borgmeier, Esquire.

It Is Further Ordered that such portion of the $20,000 on deposit which constitutes the net interest of William Newman, Jr. in said proceeds, such amount appearing to be $1666.67 as appears by approval of counsel for plaintiff Virginia Newman, shall be retained by Edgar Alstad, Clerk of United States District Court, pursuant to the aforementioned garnishment in the aforedescribed action subject to disbursements in accordance with order of the Circuit Court of Dane County in said action, and that all other monies of the $20,000 fund now on deposit in the instant action be released from said garnishment.

It Is Further Ordered that the garnishment served on

the Clerk of United States District Court in the Virginia Newman-William Newman, Jr. action still be considered in effect insofar as it should relate to the interest of William Newman, Jr. of any further proceeds to be paid by the defendants to said Clerk as a result of the settlement of the instant law suit, said continuing garnishment relating only to the interest of William Newman, Jr. of any further proceeds.

It Is Further Ordered that Edgar Alstad, Clerk of the United States District Court for the Western District of Wisconsin, shall release and pay to Attorney Frank M. Coyne as attorney for the plaintiffs the sum of $18,333.33 of the $20,000 now on deposit with said Clerk.

Dated this 17th day of November, 1955.

By the Court:
/s/ Patrick T. Stone
Judge.

Approved as to the interest of William Newman, Jr. garnishment.

/s/ John J. Walsh
Attorney for
Virginia Newman.

94-95 Undelivered, unclaimed and unopened envelope, Registered Mail, Special Delivery, sent by Clerk of the United States District Court for the Western District of Wisconsin, addressed to Mrs. Eleanor Borgmeier, Attorney at Law, 509 Illinois Street, Lemont, Illinois, postmarked at Madison, Wisconsin, on November 9, 1955, and on November 22, 1955, and at Lemont, Illinois, on November 10, 1955, and on November 21, 1955. Filed November 22, 1955.

95-96 Notice of Appeal by E. R. Borgmeier dated December 12, 1955, filed December 13, 1955, from order entered November 17, 1955, as follows:

IN THE DISTRICT COURT OF THE UNITED STATES
For the Western District of Wisconsin

Helen N. Fleming, William J. Newman, Jr., Margaret N. Walsh, Richard P. Newman, Josephine N. Krug, Adelaide Loiceano, and William McKavis, a minor, by Helen N. Fleming, his next friend,

Plaintiffs,

vs.

Lake Delton Development Company, a Wisconsin corporation, Ralph M. Hines, James H. Hill, Sr., Hilmer C. Amundson and Henry C. Titus,

Defendants,

and

James H. Hill, Jr., Millie M. Risley, Frances Hines and A. B. Batty,

Impleaded Defendants.

On Appeal of E. R. Borgmeier,

Respondent.

NOTICE OF APPEAL TO THE COURT OF APPEALS.

Notice is hereby given that E. R. Borgmeier, Respondent, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the order entered in the above cause on November 17, A.D. 1955, and particularly from that part thereof in words and figures as follows:

"It Is Hereby Ordered That due and sufficient service of the order to show cause upon Eleanore Borgmeier, Esquire, has been effected and that there has been no appearance by her nor by anyone on her behalf and that the Court has jurisdiction to pass upon the aforementioned Order to Show Cause and application for distribution of funds by the plaintiffs, and

"It Is Further Ordered That the present sum of $20,000 now on deposit with Edgar Alstad, Clerk of the above captioned United States District Court, pursuant to settlement agreement of September 21, 1955, be hereby released to the plaintiffs through their attorneys free from any lien of Attorney Eleanore Borgmeier, Esquire.

It Is Further Ordered that such portion of the $20,000 on deposit which constitutes the net interest of William Newman, Jr. in said proceeds, such amount appearing to be $1666.67 as appears by approval of counsel for plaintiff Virginia Newman, shall be retained by Edgar Alstad, Clerk of United States District Court, pursuant to the aforementioned garnishment in the aforedescribed action subject to disbursements in accordance with order of the Circuit Court of Dane County in said action, and that all other monies of the $20,000 fund now on deposit in the instant action be released from said garnishment.

"It Is Further Ordered that the garnishment served on the Clerk of United States District Court in the Virginia Newman-William Newman, Jr. action still be considered in effect insofar as it should relate to the interest of William Newman, Jr. of any further proceeds to be paid by the defendants to said Clerk as a result of the settlement of the instant law suit, said continuing garnishment relating only to the interest of William Newman, Jr. of any further proceeds.

It Is Further Ordered That Edgar Alstad, Clerk of the United States District Court for the Western District of Wisconsin, shall release and pay to Attorney Frank M. Coyne as attorney for the plaintiffs the sum of $18,333.33 of the $20,000 now on deposit with said Clerk.

Dated this 12th day of December, A.D. 1955.

E. R. Borgmeier /s/ E. R. Borgmeier
Office Address: Attorney pro se.
500 Illinois Street,
Lemont, Illinois.

97-98 Notice of attorney's lien by E. R. Borgmeier, filed December 13, 1955.

To: Lake Delton Development Company, a Wisconsin corporation, Ralph M. Hines, James H. Hill, Sr., Hilmer C. Amundson and Henry C. Titus, James H. Hill, Jr., Millie M. Risley, Frances Hines and A. B. Batty, and Hill Miller & Hill.

Please Take Notice That the undersigned attorney, E. R. Borgmeier, of Lemont, Cook County, Illinois, was heretofore employed by the undersigned:

> Helen N. Fleming and Geoffrey Fleming, William J. Newman, Margaret N. Walsh and Edwin Walsh, Richard P. Newman, Josephine N. Krug and George Krug, Adelaide McKavis Loiacano, and William McKavis, and Helen N. Fleming and Geoffrey Fleming, as the duly authorized agents of Helen N. Fleming and Geoffrey Fleming, William J. Newman, Margaret N. Walsh, and Edwin Walsh, Richard P. Newman, Josephine N. Krug and George Krug, Adelaide McKavis Loiacano and William McKavis,

to prosecute the above action against you, and who agreed to pay as compensation for such services rendered one-half (½) of whatever amount might be recovered therefrom by suit, settlement or otherwise, with the agreement that such compensation and disbursements expended in connection therewith would be a first lien on any amount recovered; that thereafter and on or about to-wit, the 21st day of October, A.D. 1954, the undersigned was discharged as their attorney, and thus became entitled to compensation on a *quantum meruit* basis for legal services rendered, together with all disbursements expended in connection with said proceeding; and therefore the undersigned claims a lien upon the above cause of action and

upon any proceeds or damages which may be derived in said action, either by judgment or settlement thereof, as security for her fees and disbursements in the conduct of such litigation up to and including November 3, 1954, in the sum of Ninety-five Thousand ($95,000.00) Dollars on account of fees, and the balance of Three Thousand Two Hundred Fifty-four and 96/100 ($3,254.96) Dollars for the balance of disbursements made.

99 Affidavit of mailing by E. R. Borgmeier, showing mailing of said attorney's lien by registered mail on February 25, 1955, to the following:

Lake Delton Development Company, a Wisconsin corporation, Lake Delton, Wisconsin;
Ralph M. Hines, Lake Delton, Wisconsin;
James H. Hill, Sr., Baraboo, Wisconsin;
Hilmer C. Amundson, Baraboo, Wisconsin;
Henry C. Titus, Reedsburg, Wisconsin;
A. B. Batty, Lake Delton, Wisconsin;
James H. Hill, Jr., Baraboo, Wisconsin;
Erma C. Miller, Baraboo, Wisconsin; and
Arthur Wickham, 828 North Broadway, Milwaukee 2, Wisconsin. (the same being refused by Arthur Wickham);

100 Bill for legal services, dated February 21, 1955, (filed on December 21, 1955) rendered by E. R. Borgmeier to the following: Helen N. Fleming and Geoffrey Fleming, William J. Newman, Margaret N. Walsh and Edwin Walsh, Richard P. Newman, Josephine N. Krug and George Krug, Adelaide McKavis Loiacano, and William McKavis, and Helen N. Fleming and Geoffrey Fleming, as the duly authorized agents of Helen N. Fleming and Geoffrey Fleming, William J. Newman, Margaret N.

Walsh and Edwin Walsh, Richard P. Newman, Josephine N. Krug and George Krug, Adelaide McKavis Loiacano and William McKavis,

To legal services rendered in re Fleming et al., vs. Lake Delton Development Co., et al., to and including November 3, 1954 . . . $95,000.00.

(3800 hours at $25.00 per hour)

101 Affidavit of mailing by E. R. Borgmeier, showing mailing of said bill for legal services on February 22, 1955.

102-104 Statement of Points on Appeal filed by E. R. Borgmeier on December 21, 1955.

105 Affidavit of mailing by E. R. Borgmeier, showing mailing of Statement of Points on Appeal on December 20, 1955.

106-114 Statement of E. R. Borgmeier in Accordance with Rule 10 (b) of the United States Court of Appeals.

115-117 Appeal bond of E. R. Borgmeier in sum of $250.00, dated December 12, 1955, with United States Fidelity and Guaranty Company, a Maryland corporation, as surety, conditioned for payment of costs on appeal. Filed December 13, 1955.

118-119 Notice of motion by E. R. Borgmeier requesting court to include original transcripts of proceedings in record on appeal, dated December 19, 1955, filed December 21, 1955, together with affidavit of mailing.

120-121 Motion of E. R. Borgmeier to include original transcripts of proceedings in record on appeal, dated December 19, 1955.

122-123 Order entered by Judge Stone dated January 2, 1956, directed to be expunged by mandate of the Court of Appeals dated May 11, 1956, in case entitled "E. R. Borgmeier, Petitioner, vs. Patrick T. Stone, etc., Respondent, Case No. 11675.

124-134 Affidavit and motion of Frank M. Coyne dated December 30, 1955, requesting entry of order dated January 2, 1956.

135-150 Affidavit of mailing of Frank M. Coyne dated January 23, 1956, filed January 24, 1956, showing mailing to E. R. Borgmeier of orders of January 2, 1956, January 18, 1956, and supporting affidavit and motion.

151-152 Order entered by Judge Stone dated January 18, 1956, filed January 25, 1956, directed to be expunged by mandate of the Court of Appeals dated May 11, 1956, in case entitled "E. R. Borgmeier, Petitioner, vs. Patrick T. Stone, etc., Respondent, Case No. 11675.

153-154 Copy of order entered by Judge Stone on January 2, 1956.

155-163 Copy of Affidavit of Frank M. Coyne dated December 30, 1955, requesting entry of order dated January 2, 1956.

164-165 Copy of motion of Frank M. Coyne dated December 30, 1955, requesting entry of order dated January 2, 1956.

165 (Reverse side) Return of United States Marshal at Chicago, Illinois, dated January 21, 1956, showing service of copy of complaint on Edmund J. Johnson, husband of E. R. Borgmeier, on January 21, 1956.

166-167 Copy of order entered by Judge Stone on January 18, 1956.

168-169 Copy of order entered by Judge Stone on January 2, 1956.

170-178 Copy of Affidavit of Frank M. Coyne dated December 30, 1955, requesting entry of order dated January 2, 1956.

179-180 Copy of motion of Frank M. Coyne dated December 30, 1955, requesting entry of order dated January 2, 1956.

181 Affidavit of service of Earl Rodrian, of Cook County, Illinois, showing service of document on E. R. Borgmeier, personally, on January 28, 1956, at 8:00 P.M. Acknowledged January 30, 1956, before Geoffrey Fleming, notary public.

182-184 Copy of Mandate of the United States Court of Appeals, dated May 11, 1956, issued in case of E. R. Borgmeier, etc., Petitioner, vs. Patrick T. Stone, etc., Respondent, Case No. 11675, with accompanying letter of Kenneth J. Carrick, Clerk of the United States Court of Appeals, dated June 7, 1956. Filed June 8, 1956.

185-187 Opinion of the United States Court of Appeals, dated May 11, 1956, issued in case of E. R. Borgmeier, etc., Petitioner, vs. Patrick T. Stone, etc., Respondent, Case No. 11675. Filed June 8, 1956.

188-197 Photostatic copy of docket entries in District Court. Marked "Case Closed 11/28/55."

198-200 Designation of Contents of Record on appeal of E. R. Borgmeier, from order entered by Judge Stone on November 17, 1955. Filed December 21, 1955.

201 Affidavit of Mailing by E. R. Borgmeier, showing mailing of Designation of Contents of Record on appeal of E. R. Borgmeier from order entered by Judge Stone on November 17, 1955.

202 Certificate of Clerk of the United States District Court for the Western District of Wisconsin, dated August 1, 1956, attesting to record on appeal.

In a separate folder forwarded by the Clerk of the District Court are three copies (carbon) of transcripts of proceedings had before Judge Stone:

a) proceedings had November 3, 1954;

b) proceedings had January 25, 1955;

c) proceedings had February 14, 1955;

TRANSCRIPT OF PROCEEDINGS BEFORE JUDGE STONE ON JANUARY 25, 1955.

18-19 Mr. Fleming: May I say something?

Mr. Coyne Yes; sure.

The Court: Will you enter your appearance, please?

Mr. Fleming: Fleming, Judge, Geoffrey Fleming.

I think the Court—there isn't any question about it—the Court should pass on this question of res adjudicata and the Statute of Limitations, which will either sustain our position, or be rejected by the Court.

I agree with Mr. Wickham that perhaps that should have been done by Mrs. Borgmejer long before she got into this question of the facts; because if it is sustained, we could proceed then, or if their motion is overruled, we could proceed then to present the facts to establish the confidential relationship.

The Court: That should have been done before all this photography.

Mr. Fleming: That's right; it was done backwards. At one time I suggested that it be done, and at just about that time—I mean, when I discovered how much expense had been incurred, I suggested that these motions be disposed of before anything else be done. That is when the difficulty arose, because the money was then shut off.

But Mr. Wickham filed his motion for summary judgment and brought the case up, or brought the issue up. And, as I have talked to Mr. Coyne, I have felt we should have disposed of that matter before. . . .

* * * * * * *

44 Mr. Wickham: Their point is that they are coming into equity to establish an equitable title, claiming that that order of Judge Holly and what he did was wrong.

Mr. Coyne: No.

Mr. Fleming: No, no.

Mr. Wickham: That there was either a fraud upon him,

and they are asking for relief, and they were parties to it, or he was a party to the fraud himself.

The Court: From what he (Mr. Fleming) says here, there is an intimation there was a little fraud somewhere along the line, on the court.

TRANSCRIPT OF PROCEEDINGS BEFORE JUDGE STONE ON FEBRUARY 14, 1955.

14 The Court: * * Are you ready for trial?

Mr. Coyne: No.

The Court: It is not going to be delayed. This case is going to be brought on to trial very, very promptly.

Mr. Coyne: No—I would like to say this: I am not interested in delaying it. I am interested in getting enough time to prepare it so I can do justice for my clients here.

The Court: Apparently you have got it pretty well prepared now.

Mr. Coyne: I have found all this material in the adverse examinations that Borgmeier took of these people—and I want to say this: When we were here three weeks ago I didn't know any of this—then I was arguing this on general principles and on what I merely understood as to whether this agreement existed—

* * * * * * *

16 Mr. Coyne: I would like to ask this—I can't do it by next week, but I am not going to unduly delay it here, I will try to do it as rapidly as I can.

The Court: This case has been hanging around this Court a year, hasn't it, or more?

Mr. Wickham: It will be two years in May.

Mr. Coyne: It isn't my fault—

The Court: No, Mr. Fleming is responsible for the handling of the case. This case will be set down for trial next Monday.

Mr. Coyne: What can I do about Miss Borgmeier?

The Court: I don't know.

Mr. Coyne: Your Honor, next Monday I am going to be in Kansas City..

The Court: Mr. Fleming is a competent lawyer. He was in this from the very beginning. * * * * *

In a separate folder are several exhibits introduced at the trial before Judge Stone on September 20-21, 1955, none of which are pertinent to the question now presented on this appeal.

The ledger sheet appearing at Page 84 of the Record does not disclose the disbursements made by the Clerk from the moneys on deposit, and the Record should be completed in this respect.

An examination of the Record does not disclose any proof of service of the Notice of Appeal herein (filed by appellant with the Clerk of the District Court on December 13, 1955), which service was required to be made by the Clerk of the District Court upon all parties entitled to receive the same, and the Record should also be corrected to show such service.